

## REMARKS

In the Office Action of June 27, 2002, claims 1-8 were rejected under 35 USC §112, second paragraph, for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. Specifically, claims 1, 4, 6, 7, and 8 were rejected for using the word "about" in claiming the basis weight, machine direction tensile, T/S ratio, and tab strength. Applicants respectfully traverse the §112 rejection for the use of the word "about" in the claims.

The word "about" has been held to be definite when recited in the claims by various courts. For instance, the Patent Office Board of Appeals in Ex parte Eastwood, 163 USPQ 316, 317 (PO BdApp 1968) held that the descriptive word "about" is not indefinite. The meaning of the word "about" is clear but flexible and is deemed to be similar in meaning to terms such as "approximately" or "nearly". Id. In Eastwood, the claim recited a hot mold wherein the lower end has an area of between 25 to about 45 % of the mold entrance. Id.

The term "about" was also discussed in Syntex Inc. v. Paragon Optical, Inc., CIV-84-260 PHX.WPC, 1987 U.S. Dist. LEXIS 14544, at \*1(D. Ariz. Nov. 2, 1987). Here, the term "about" was held to not render a claim indefinite. Id. at \*139-40. Here, under 35 USC § 112, the term "about" was held to entitle the patentee to a broad interpretation of any range claimed in the patent. Id. at \*140. Also, as a matter of law, the term "about" was held to be a "clear warning that exactitude is not claimed but rather a contemplated variation". Id.

Also, the United States Court of Appeals for the Federal Circuit has held that the term "about" is not indefinite under § 112. For instance, please see W.L. Gore & Associates, Inc. v. Garlock, 721 F.2d 1540 (Fed. Cir. 1983). Here, the term "about" was held to be definite by the

Federal Circuit for a process claim that recited the step of "stretching ...at a rate exceeding about 10% per second". Id. at 1557. Applicants are providing with this Office Action copies of the relevant cases discussing the interpretation and non-indefiniteness of the term "about".

As such, Applicants respectfully submit that the term "about" is not indefinite under 35 USC § 112, 2<sup>nd</sup> paragraph. The term "about" has been held to be a term that is not indefinite, and a term that has been interpreted to be given a particular meaning. Specifically, courts have held that the term "about" is a flexible term with a meaning that is similar to "approximately". As such, the range delineations and the other range limits recited in claims 1-8 are not indefinite under 35 USC § 112, 2<sup>nd</sup> paragraph. Therefore, Applicants respectfully request the rejection to claims 1-8 under 35 USC § 112, 2<sup>nd</sup> paragraph, be removed.

In the Office Action of June 27, 2002, claims 1, 2, 6, and 7 were rejected under 35 USC §102(b) as being anticipated by Chan et al (U.S. Patent Number 5,118,554). Applicants respectfully submit that amended claim 1 is not anticipated by Chan. Chan does not disclose a napkin assembly for a dispenser that has a first continuous napkin sheet and a second continuous napkin sheet.

Independent claim 1 has been amended to clarify the connected nature of the napkin sheets. The napkin assembly includes a first continuous napkin sheet where the plurality of napkins are connected to an adjacent napkin in series by a plurality of tabs. Further, the second napkin sheet is a continuous napkin sheet having a plurality of napkins that are connected to an adjacent napkin in series by a plurality of tabs. Chan does not disclose a **continuous** napkin sheet. The invention of Chan seeks to improve upon prior art paper towels by providing for a stack of interleaved towels that attempt to solve the problem of tab-out and fall-out (see Chan,

column 1, line 55- column 2, line 3).

In order to solve these problems, Chan provides for a stacked configuration in which less force is required to draw a lead flap 18 of the towel 10 into a dispensing position through the dispensing opening (see Chan, column 3, lines 48-52). Referring now to Fig. 3 of Chan, in order to accomplish this goal, towel B is provided with a lead flap 18 that is shorter than the trailing flap 20 of towel A (see Chan, column 3, lines 38-41). When a user grasps the lead edge 12 of towel A and pulls downward, the trailing flap 20 of towel A is dragged across the lead flap 18 of towel B (see Chan, column 3, lines 37-40). Due to this difference in length, the frictional forces between the trailing flap 20 of towel A and the lead flap 18 of towel B are less than they would be if these two flaps 18 and 20 fully overlapped (see Chan, column 3, lines 41-44).

Also, the shorter lead flap 18 permits the leading edge 12 of the towel 10 next to be dispensed to be positioned closer to the dispensing opening of the dispenser than would be the leading edge 12 of a typical V-fold configuration (see Chan, column 3, lines 44-48). Due to this difference in length, less deflection and deformation of the lead flap 18 is required to draw it through the dispensing opening (see Chan, column 3, lines 48-50). Since less force is needed to draw the lead flap 18 of the towel 10 next to be dispensed through the dispensing opening, Chan surmises that the reduction of these forces minimizes tear-out and tab failure of the dispensing of towel A in that less force is required to be exerted on towel A to pull the lead flap 18 of towel B through the dispensing opening (see Chan, column 3, lines 52-57). As such, Chan clearly teaches a stacked configuration in which the tailing edge of one towel is longer than the leading edge of a subsequent towel that is next to be dispensed.

Also, it would not have been obvious for one skilled in the art to modify Chan such that

Chan is now provided with a first continuous napkin sheet and a second continuous napkin sheet Fig. 3 of Chan clearly shows a stacked configuration in which the towels are not continuous, but are individually folded within the stacked configuration. If the sheets were continuous, it would completely frustrate the teachings of Chan in that a continuous sheet would not allow for the trailing edge of one towel to be longer than the leading edge of another towel. It would necessarily be the case that the two towels would have these sections being of equal length. This type of configuration is in fact 180° opposite from the configuration taught in Chan, which is one having a trailing flap 20 being of a longer length than the lead flap 18. It would not have been obvious for one skilled in the art to provide the interfolded towel configuration of Chan with a continuous napkin sheet because such a continuous napkin sheet would not be able to provide the required configuration called for in Chan, that is one having an unequal lead flap 18 and tailing flap 20. As such, it would not have been obvious to one skilled in the art to modify Chan so that a continuous napkin sheet were present because doing so would create a folded configuration that is explicitly disfavored in Chan, that is one having lead flap 18 and trailing flap 20 be of a more equal length.

Applicants respectfully submit that element 22 of Chan is not a plurality of tabs that are used to connect a series of continuous napkin sheets. Element 22 is described in column 3, at line 37 of Chan as being a tab end 22. Further, tab end 22 is also described as being a two-ply tab end 22 (see Chan, column 4, lines 31-32). Also, as can be seen in Fig. 3 of Chan, the towels 10 labeled A, C, and E are not connected to one another. This is also the case upon study of the description of Chan describing the improved features of the device (column 3, lines 32-58). As such, Applicants respectfully submit that the tab end 22 of Chan is simply a location that is

grasped by a user in order to dispense a towel 10 from a dispensing machine. Tab end 22 is not a plurality of tabs that are used to connect one napkin to the other in a series of napkin sheets. Again, this is apparent through study of Fig. 3 and the related discussion.

Also, in the Office Action of June 27, 2002, claims 1, 2, and 5-7 were rejected under 35 USC §103(a) as being unpatentable over Chan in view of Everhart et al (U.S Patent Number 5,389,201). Everhardt was applied, particularly to claim 5, for disclosing napkins that are comprised of pulp fibers. Respectfully, Applicants submit that amended claim 1 defines over the combination of Chan and Everhardt for essentially the same reasons as discussed above with respect to Chan.

Also, in the Office Action of June 27, 2002, claims 1, 2, 4, and 6-8 were rejected under 35 USC §103(a) as being unpatentable over Chan in view of Lloyd et al. (EP 0302382 A1). Specifically, Lloyd was cited against claims 4 and 8 for the proposition of providing a napkin having a basis weight of about 30 gsm, and where the tab strength is greater than about 30 g-f. Applicants submit that amended claim 1 defines over the combination of Chan and Lloyd. Lloyd discloses a perforated continuous tissue web 11 that has lines of perforation 12 which define the length of the individual tissue sheets within the web (see Lloyd page 3, lines 35 and 36). It would not have been obvious to one skilled in the art to take this perforated continuous tissue web 11 and combine it with the interfolded configuration of Chan because doing so would produce an interfolded configuration wherein the lead flap 18 of Chan is the same length as the trailing flap 20. As discussed, doing so would produce an interfolded configuration that is completely opposite from and is explicitly disfavored upon viewing the teachings of Chan. As such, this combination of references would not be obvious to one skilled in the art. Therefore,

Applicants respectfully submit that amended claim 1 defines over the combination of Chan and Lloyd.

Also in the Office Action of June 27, 2002, claims 1, 2, and 4-8 were rejected under 35 USC §103(a) as being unpatentable over Chan in view of Cook et al. (U.S. Patent Number 5,2420,57). Applicants respectfully submit that the folded tissue paper 300 as shown in Fig. 11 and described at column 10, lines 6-49 of Cook is not combinable with the interleaved configuration shown in Chan for essentially the same reasons as discussed above with respect to Chan and with respect to Chan in view of Lloyd. Therefore, Applicants respectfully submit that independent claim 1 is patentable over the combination of Chan and Cook. Cook was specifically cited against claims 4, 5, and 8 for disclosing a napkin having a basis weight of about 30 gsm, a napkin that comprises pulp fibers, and a tab strength that is greater than about 30 g-f.

Also in the Office Action of June 27, 2002, claims 1-3 and 5-7 were rejected under 35 USC §103(a) as being unpatentable over Chan in view of Dwiggins et al. (U.S. Patent Number 6,033,761). Specifically, Dwiggins was cited for the proposition of disclosing a stack size of 500 napkins. Applicants respectfully submit that amended claim 1 is patentable over the combination of Chan and Dwiggins in that neither of the references taken either alone or in combination disclose a napkin assembly having a first continuous napkin sheet and a second continuous napkin sheet. Again, it would not have been obvious for one skilled in the art to provide such a continuous napkin sheet due to the reasons discussed above with respect to the patentability of claim 1 with respect to Chan.

Therefore, Applicants respectfully submit that independent claim 1 is in proper condition for allowance and that all claims which depend directly or indirectly from independent claim 1

are also in condition for allowance (claims 2-8). Their rejections being made moot due to the allowance of independent claim 1.

Applicants respectfully submit that all claims are allowable and that the application is in condition for allowance. Favorable action thereon is respectfully requested.

The Examiner is encouraged to contact the undersigned at his convenience to resolve any remaining issues.

Respectfully submitted,

DORITY & MANNING, P.A.

9/26/02

Date

*Neal P. Pierotti*  
Neal P. Pierotti  
Reg. No. 45,716  
P.O. Box 1449  
Greenville, SC 29602-1449  
(864) 271-1592  
FAX (864) 233-7342

Amended Claims for U.S. Serial No. 09/776,395 (Attorney Docket No. AFH13782.1)

1. (Amended) A napkin assembly for a dispenser, the napkin assembly comprising:  
a first continuous napkin sheet further comprising a plurality of napkins wherein each napkin has a basis weight from about 20 gsm to about 40 gsm and is connected to an adjacent napkin in series by a plurality of tabs;  
a second continuous napkin sheet further comprising a plurality of napkins wherein each napkin has a basis weight from about 20 gsm to about 40 gsm and is connected to an adjacent napkin in series by a plurality of tabs, the second napkin sheet being positioned proximate to the first napkin sheet in an offset relation so that the first and second napkin sheets are formed into a nested configuration for dispensing.